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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/446,783

05/16/2000

NEIL P. DESAI

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25226 7590 12/03/2008

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EXAMINER

VU, JAKE MINH

ART UNIT

PAPER NUMBER

1618

MAIL DATE

DELIVERY MODE

12/03/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No. 09/446,783	Applicant(s) DESAI ET AL.	
Examiner JAKE M. VU	Art Unit 1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 21 August 2008.
- 2a) This action is **FINAL**.
- 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 73 and 74 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 73 and 74 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 8/21/08.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application
- 6) Other: _____

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DETAILED ACTION

Receipt is acknowledged of Applicant's Argument and Information Disclosure Statement filed on 08/21/2008.

- Claims 73 and 74 are pending in the instant application.

Double Patenting

Claims 73 and 74 rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over U.S. Patent No. 6,537,579; 5,362,478; 5,498,421; 5,505,932; 5,508,021; 5,512,268; 5,635,207; 5,639,473; 5,650,156; 5,665,382; 5,665,383; 5,916,596; 5,560,933; and 5,439,686 **are maintained** for reasons of record in the previous office action filed on 01/03/2007.

Note, it is acknowledged that Applicant will address these rejections when the pending claims are found allowable.

Claim Rejections - 35 USC § 102

Claims 73 and 74 are rejected under 35 U.S.C. 102(b) as being anticipated by LIVERSIDGE et al (US 5,399,363) in light of MARKUS et al (cited supra) **are maintained** for reasons of record in the previous office action filed on 01/03/2007, 10/02/2007, 02/21/2008, and as discussed below.

Applicant argues that LIVERSIDGE does not disclose applying ultrasonic energy or high shear milling to albumin. The Examiner finds this argument unpersuasive, because LIVERSIDGE disclosed albumin was used as the surface modifier under the same milling condition as Example 1 (see col. 9, Example 2-4) and that the dispersion

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can be subject to sonication steps (see col. 6, line 52-60). Thus, the albumin would have been sonicated.

Applicant argues that LIVERSIDGE discloses that the surface modifiers do not chemically react with themselves and are essentially free of intermolecular crosslinkages. The Examiner finds this argument unpersuasive, because as discussed in the previous office action, LIVERSIDGE's "essentially free of intermolecular crosslinkages" refers to the non-intermolecular crosslinkages prior to the high shear milling and ultrasonication similar to Applicant's albumin prior to high shear milling. It is reasonable to conclude that the same ingredient, such as albumin, is being milled or sonicated by the same mode in both Applicant's disclosure and the prior art reference. The fact that Applicant may have discovered disulfide bonds are crosslinked in the albumin when using the same method in the prior art does not mean the disulfide bonds did not exist in the prior art's composition.

Thus, LIVERSIDGE teaches, either expressly or inherently, each and every limitation of the instant claims.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Telephonic Inquiries

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAKE M. VU whose telephone number is (571)272-8148. The examiner can normally be reached on Mon-Tue and Thu-Fri 8:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jake M. Vu/
Primary Examiner, Art Unit 1618

Application Number



Application/Control No.

09/446,783

Examiner

JAKE M. VU

Applicant(s)/Patent under Reexamination

DESAI ET AL.

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